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10/580,026

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Phillip Donnelly

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EXAMINER

RUSH, KAREEN KAY

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

11/22/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/580,026 | Applicant(s) DONNELLY ET AL. | |
| | Examiner KAREEN RUSH | Art Unit 3781 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/5/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffmann (DE29913627) in view of Mogil (US6073796).

Regarding claim 1, Hoffmann teaches an insulating sleeve (Fig. 1 at 2) for a drinking glass (Fig. 1) of the type having a stem with a foot and a bowl (Fig. 1). The sleeve is adapted to extend about the glass and comprises insulating material (Fig. 1 at 2). The insulating material is slightly elastic (allowing the opening of the sleeve to expand and contract to accommodate the glass insertion into the slit). The elasticity enables the sleeve to stretch to accommodate bowls of different sizes (Hoffmann, page 4, lines 6-8). The sleeve has an upper opening (Fig. 1 at 3) and a lower opening (Fig. 1 at the position which the stem passes through the sleeve). The upper opening has a peripheral edge (Fig. 1 at 0) which, in use, extends about the bowl of the glass leaving the glass open. The lower opening is smaller than the upper opening and adapted to extend about the stem of the glass. Hoffmann DIFFERS in that it does not specifically teach the sleeve has an elongate releasable closure means extending from one opening and adjacent to but spaced from the other opening, as claimed. Attention,

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however, is directed to Mogil, which discloses an insulating sleeve (Fig. 1). Mogil makes use of an elongated releasable closure means (Fig. 4 at 62). The closure means extends from the narrower opening and is spaced from the other opening (Fig. 3 at 54). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Hoffmann by employing a releasable closure means, in view of the teachings of Mogil, in order to improve the insulation by closing the slit and in order to better secure the glass within the sleeve.

Regarding claim 2, the reference as applied to claim 1 teaches the sleeve. The elongate releasable closure extends from the lower opening and adjacent to but spaced below the upper opening, and the lower opening is enlarged prior to receiving the glass (this occurs when the Hoffmann reference is modified with the reference of Mogil).

Regarding claim 3, the reference as applied to claim 1 teaches the sleeve. The elongate closure is a zip (Mogil, Fig. 4 at 62).

2. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffmann (DE29913627) in view of Mogil (US6073796) and in further view of Beuke (US6655543).

Regarding claim 4, the reference as applied to claim 1 teaches the sleeve. The reference as applied to claim 1 DIFFERS in that it does not specifically disclose the upper opening of the sleeve comprises an edge of an elastic band extending about the bowl, as claimed. Attention, however, is directed to Beuke,

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which discloses an insulating sleeve (Fig. 3). Beuke makes use of an elastic band (Fig. 3 at 49). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the reference as applied to claim 1 by employing an elastic band, in view of the teachings of Beuke, in order to have a snug secure fit around the bowl of the glass.

Response to Arguments

1. Applicant's arguments filed 9/29/2010 have been fully considered but they are not persuasive. The argument that the prior art does not disclose a "insulating" or "slightly elastic insulating material" (Remarks page 3) is not found persuasive. The argument that there would be no reason to combine the references used in claim 1 and 4 (Remarks page 4) is not found persuasive.

a. Examiner disagrees that the Hoffmann reference does not teach the temperature control device (sleeve) is an insulator. Please refer to Hoffmann (page 4, lines 11-12).

b. Examiner disagrees that the insulating material of Hoffmann is not slightly elastic. Hoffmann discloses "the shape and size of the recess should generally be adapted to the shape and size of the drinking glass it is to accommodate" (Hoffmann, page 4, lines 6-8). The sleeve loses its shape as the slit (member 5) is widened at the top to accept the bowl of the glass and then it returns to its original shape as seen in Figure 1 in order to house the glass. Dictionary.com defines elastic as "**capable of returning to its original** length, **shape**, etc., after being stretched, **deformed**, compressed, or expanded".

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c. Applicant argues that the material used for the sleeve in the Hoffmann reference is not elastic. Examiner asserts that plastic and glass are **slightly** elastic. Plastic and glass ("flexible glass") are considered to be elastic. ABS plastics and acrylics have elastic properties. Referring to http://www.engineeringtoolbox.com/young-modulus-d_417.html gives the Young's modulus. The Young's modulus is considered to be a measurement of elasticity obtained from a material.

d. The new limitation states "to enable it to stretch to accommodate bowls of different sizes" (claim 1). After further consideration, Examiner asserts that this new limitation does not define over the prior art. Hoffmann teaches that the sleeve can stretch to accommodate different sizes. Hoffmann discloses "the shape and size of the recess should generally be adapted to the shape and size of the drinking glass it is to accommodate" (Hoffmann, page 4, lines 6-8).

e. Please refer to the rejection of claim 1 and 4 above for the obvious reasoning in combining the references used in claim 1 and 4.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Melk reference discloses an insulated sleeve having a zipper. The Beggins reference discloses an insulated sleeve. The Kataoka reference discloses an insulated sleeve having an open top and bottom. The Hobson reference discloses an insulated sleeve having a zipper. The DeMarco reference discloses an insulated sleeve having a zipper. The Mann reference discloses an insulated sleeve

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having a zipper. The Whitman reference discloses a holder. The Campi reference discloses a holder. The Killoren reference discloses a holder. The Hicks reference discloses a holder. The Meza reference discloses a holder. The Tom reference discloses a holder. The Garofolo reference discloses a holder. The Gortese reference discloses a holder. The Hinchliff reference discloses a holder. The Diehl reference discloses a glass.

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREEN RUSH whose telephone number is (571)270-5611. The examiner can normally be reached on Monday-Friday (8:00 am - 5:00 pm).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781

K.R.
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